



Billing Code 4810-AS-P

DEPARTMENT OF THE TREASURY

Fiscal Service

**31 CFR Part 210**

**[FISCAL-2019-0001]**

**RIN 1510-AB32**

**Federal Government Participation in the Automated Clearing House**

**AGENCY:** Bureau of the Fiscal Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury, Bureau of the Fiscal Service (Fiscal Service or “we”) is adopting the changes proposed in its Notice of Proposed Rulemaking (NPRM) for its regulation governing the use of the Automated Clearing House (ACH) Network by Federal agencies. Our regulation adopts, with some exceptions, the NACHA Operating Rules developed by NACHA – The Electronic Payments Association (now known as Nacha), as the rules governing the use of the ACH Network by Federal agencies. We are issuing this final rule to address changes that Nacha has made to the NACHA Operating Rules since the publication of the 2016 NACHA Operating Rules & Guidelines book. These changes include amendments set forth in the 2017, 2018, and 2019 NACHA Operating Rules & Guidelines books with an effective date on or before June 30, 2021.

**DATES** Effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].



**ADDRESSES:** You can download this final rule at the following Internet address:

<https://www.fiscal.treasury.gov/ach/>.

**FOR FURTHER INFORMATION CONTACT:** Ian Macoy, Director of Settlement Services, at (202) 874-6835 or [ian.macoy@fiscal.treasury.gov](mailto:ian.macoy@fiscal.treasury.gov); Natalie H. Diana, Senior Counsel, at (202) 874-6680 or [natalie.diana@fiscal.treasury.gov](mailto:natalie.diana@fiscal.treasury.gov); or Caitlin Gehring, Attorney Advisor, at (202) 874-5710 or [caitlin.gehring@fiscal.treasury.gov](mailto:caitlin.gehring@fiscal.treasury.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On January 3, 2020, we published a Notice of Proposed Rulemaking at 85 FR 265, requesting comment on proposed amendments to 31 CFR Part 210 (Part 210), which governs the use of the ACH Network by Federal agencies. The ACH Network is a nationwide electronic fund transfer system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment-related information among participating financial institutions. Rights and obligations among participants in the ACH Network are governed by the NACHA Operating Rules, which Part 210 incorporates by reference, with certain exceptions. From time to time, the Fiscal Service amends Part 210 in order to address changes that Nacha periodically makes to the NACHA Operating Rules or to revise the regulation as otherwise appropriate.

In 2017, Part 210 incorporated the NACHA Operating Rules as set forth in the 2016 NACHA Operating Rules & Guidelines book. Nacha has adopted a number of changes to the NACHA Operating Rules since the publication of the 2016 NACHA Operating Rules & Guidelines book. We are incorporating most, but not all, of the rule changes that Nacha adopted



in 2017 and 2018, as set forth in the 2019 NACHA Operating Rules & Guidelines book (2019 Rule Book). We are also adopting one change to Part 210, related to reclamations, that does not stem from a change to the NACHA Operating Rules, and several non-substantive changes to reflect the renumbering of certain NACHA rules and appendices.

We are adopting as final all of the amendments proposed in the NPRM.

## **II. Public Comment and Fiscal Service Response**

Fiscal Service sought public comment on the proposed rule to assist the agency in giving full consideration to the matters discussed in the proposed rule. We received comments from two organizations, Nacha and the Independent Community Bankers of America (ICBA), and two individuals, though one of the individual's comment did not discuss the proposed rule and is therefore not addressed. Both Nacha and ICBA supported the proposed adoption of the NACHA Rules as set forth in the 2019 NACHA Operating Rules & Guidelines, as well as our proposed change to the provision related to actual or constructive notice of death. We appreciate Nacha's and ICBA's support of the changes and Fiscal Service's efforts to embrace the ACH operating rules.

ICBA, Nacha and one individual commenter also supported Fiscal Service's proposed adoption of The Supplementing Fraud Detection Standards for WEB Debits rule, though both ICBA and Nacha urged Fiscal Service to adopt the rule by Nacha's effective date of March 19, 2021. The Supplementing Fraud Detection Standards for WEB Debits rule will require originators of WEB debit entries to perform account validation before originating a WEB debit to an account for the first time and upon a change to an account number receiving WEB debit entries. Fraud prevention is a top priority of Fiscal Service and we will be actively working toward implementing account validation for agency originated WEB debits. However,



government-wide implementation is not feasible by the March 2021 deadline. Implementing this change affects multiple systems and requires substantial lead time and additional financial resources. We expect some of our systems will be compliant by Nacha's deadline but know that government-wide compliance will not be possible by March 2021. Therefore, Fiscal Service is delaying the effective date of this rule to March 19, 2022.

One individual commenter opposed the increase, for Same Day ACH eligibility, of the maximum per-entry amount from the current \$25,000 to \$100,000 (Same Day ACH Dollar Limit Increase) as potentially contributing to greater exposure to losses from fraud or error. However, we would note that other ACH entries (generally next-day or future-day settlement) already have a much higher, system-imposed limit of \$99,999,999.99. Further, the ACH Network and Part 210 provide parties return rights in the event that fraud or an error in the valuation of an entry has occurred. We view the benefits of the Same Day ACH Dollar Limit Increase to parties paying or receiving funds from the federal government, together with existing protections inherent to the government's use of the ACH Network, as exceeding any marginal increase in risk resulting from a higher Same Day ACH entry limit. Accordingly, we are adopting the increase in the Same Day ACH Dollar Limit to \$100,000.

### **III. Summary of Final Rule**

#### **A. *2017 NACHA Operating Rules & Guidelines Book (2017 Rules Book) Changes***

In 2017 Nacha adopted a new rule, the Third-Party Sender Rule, which requires every Originating Depository Financial Institution (ODFI) either to register its Third-Party Sender customers with Nacha or to provide Nacha with a statement that it has no such customers. The rule, which became effective on September 29, 2017, establishes deadlines for the initial



provision and updating of registration information, and provides that Nacha may request from an ODFI certain additional information regarding a Third-Party Sender.

A Third-Party Sender is a type of third-party service provider that acts as an intermediary in transmitting entries between an Originator and an ODFI. Federal agencies and Fiscal Service do not utilize Third-Party Senders. Although Fiscal Service uses fiscal and financial agents (Federal Reserve Banks and certain chartered depository financial institutions, respectively) in its ACH payments and collections operations, those entities are not providing services in a capacity as Third-Party Senders. Accordingly, the rule will not affect the Federal government. We are incorporating in Part 210 the Third-Party Sender Rule.

B. *2018 NACHA Operating Rules & Guidelines Book (2018 Rules Book) Changes*

Nacha did not publish any new rules in the 2018 Rules Book. The 2018 Rule Book contains revisions related to the implementation of Phase 2 of Same Day ACH, which we adopted in 2017 (See 82 FR 42597), and the Third-Party Sender Rule discussed in Section A above.

C. *2019 NACHA Operating Rules & Guidelines Book (2019 Rules Book) Changes*

The 2019 Rules Book contains changes related to the following amendments:

- Faster Funds Availability;
- Same Day ACH Dollar Limit Increase; and
- New Same Day ACH Processing Window.

In the Final Rule we are adopting all three of these amendments to the 2019 Rules Book in Part 210, as follows:

**1. Faster Funds Availability**



The Faster Funds Availability rule will provide faster funds availability for many ACH credits. Funds from Same Day ACH credits processed in the first Same Day processing window will be made available to the Receiver for withdrawal by 1:30 p.m., Receiving Depository Financial Institution (RDFI) local time. Funds from all non-Same Day ACH credits that are made available to the RDFI by 5:00 p.m., RDFI local time, on the banking day before Settlement Date will be available to the Receiver for withdrawal by 9:00 a.m., RDFI local time, on Settlement Date.

Previously, funds from non-Same Day ACH credits were required to be made available to the Receiver for withdrawal by the end of the Settlement Date, which could be at any hour before the RDFI's close of business or by the end of day at an ATM. One exception was for Prearranged Payment and Deposit (PPD) credits made available to the RDFI by 5:00 p.m., RDFI local time, on the banking day before Settlement Date. The RDFI was required to provide funds availability for these credits by the opening of business on Settlement Date. This exception is now the standard practice for any ACH credit made available to the RDFI by 5:00 p.m., RDFI local time, on the banking day before Settlement Date. This rule change also establishes a firm time of 9:00 a.m., RDFI local time, for such availability and eliminates references to "opening of business."

Receivers will have earlier funds availability for a large portion of ACH credits:

- Funds from non-Same Day ACH credits made available to the RDFI by 5:00 p.m., RDFI local time, on the banking day before settlement will be available to the Receiver for withdrawal on Settlement Date by 9:00 a.m., RDFI local time;



- Funds from Same Day credits received in the first Same Day ACH processing window will be available to the Receiver for withdrawal by 1:30 p.m., RDFI local time; and
- Funds from Same Day credits received in the second Same Day ACH processing window will be available to the Receiver for withdrawal by 5:00 p.m., RDFI local time.

This NACHA rule became effective on September 20, 2019. We are accepting this amendment. Because the government is not a depository institution, the rule will not affect the government's receipt of ACH payments, but will mean that some recipients of government Same Day and non-Same Day ACH payments will have earlier access to their funds from their financial institutions.

## **2. Same Day ACH Dollar Limit Increase**

The Same Day ACH Dollar Limit Increase rule will increase the per-transaction dollar limit for Same Day transactions from \$25,000 to \$100,000. At implementation, both Same Day ACH credits and Same Day ACH debits will be eligible for Same Day processing up to \$100,000 per transaction. Nacha's rule is effective on March 20, 2020.

We are accepting this rule, which will enable individuals and entities to make Same Day ACH payments of up to \$100,000 to the government, and will enable Federal agencies to make Same Day ACH payments of up to \$100,000.

## **3. New Same Day ACH Processing Window**

The New Same Day ACH Processing Window rule will create a new processing window that will enable ODFIs and their customers to originate Same Day transactions for an additional two hours each banking day. The new window will allow Same Day ACH files to be submitted to the ACH Operators until 4:45 p.m. ET. RDFIs will receive files from this third window by



5:30 p.m. ET, with interbank settlement occurring at 6:00 p.m. ET. RDFIs will need to make funds available for credits processed in the new window by the end of their processing for that Settlement Date. All credits and debits, and all returns, will be eligible to be processed in the new Same Day ACH window, with the exception of International ACH Transactions (IATs), Automated Enrollment Entries (ENRs), and forward entries in excess of the per-transaction dollar limit.

Currently, ODFIs can submit Same Day ACH files to the ACH Operators until 2:45 p.m. ET. ODFI processing arrangements that use payment processors and correspondent institutions have earlier deadlines. ACH end-users may have even earlier deadlines to submit Same Day ACH files to their ODFIs. These timing requirements can make it impractical for many ODFIs to offer, or for ACH end-users to adopt, Same Day ACH payments. Adding a third, later Same Day ACH processing window will provide greater access for all ODFIs and their customers.

Nacha's rule is effective on March 19, 2021. We are accepting this rule, which will give more individuals and entities the opportunity to pay the government by Same Day ACH. It will also make it possible for the government to originate Same Day ACH payments later in the day than is currently possible.

#### *D. Supplement #2-2018 to the NACHA Operating Rules Changes*

On November 2, 2018, the NACHA Voting Membership approved nine amendments to the NACHA Operating Rules. Because the nine amendments were approved just prior to publication of the 2019 Rules Book, the amendments are included in the rule book as a separate supplement rather than within the main body of the publication.

### **1. Return for Questionable Transaction**



Before adoption of this amendment, an RDFI could return an ACH entry for any reason, except as otherwise provided in Article Three, Subsection 3.8.1 (Restrictions on RDFI's Right to Transmit Return Entries) of the NACHA Operating Rules. Defined return reasons included, among others, entries that were deemed unauthorized by the Receiver or those with an invalid account number or no account at the RDFI. If an RDFI wanted to return an entry that did not have a valid account number and appeared to be questionable, suspicious, or anomalous in some way, the RDFI did not have a defined return reason code to communicate this information to the ODFI and Originator. NACHA guidance allowed RDFIs to use reason code R17 to return questionable transactions that would otherwise be returned using a standard administrative return reason (R03 – No Account/Unable to Locate Account or R04 – Invalid Account Number Structure). However, none of these options enabled an ODFI or its Originator to differentiate questionable transactions from other routine account number errors.

Under the Return for Questionable Transaction rule, RDFIs are able (but not required) to use Return Reason Code R17 – File Record Edit Criteria to indicate that the RDFI believes the entry containing invalid account information was initiated under questionable circumstances. This use of R17 is optional at the discretion of the RDFI. Those RDFIs that elect to use R17 for this purpose are required to use the description "QUESTIONABLE" in the Addenda Information field of the return. This description in an R17 return differentiates returns that appear to be suspicious to the RDFI from those due to routine account number issues.

This rule became effective on June 21, 2019. We are accepting this amendment, which may give agencies greater insight into transactions that are returned because they are suspicious or questionable.

## **2. Supplementing Fraud Detection Standards for WEB Debits**



Under existing rules, Originators of Internet-initiated (WEB) debit entries must use a “commercially reasonable fraudulent transaction detection system” to screen WEB debits for fraud. This requirement is intended to help prevent fraudulent payments from being introduced into the ACH Network, and to help protect RDFIs from posting fraudulent or otherwise incorrect or unauthorized payments.

With the implementation of the Supplementing Fraud Detection Standards for WEB Debits rule, the current screening requirement will be enhanced to make it explicit that “account validation” is part of a “commercially reasonable fraudulent transaction detection system.” The supplemental requirement applies to the first use of an account number, or changes to the account number. For existing WEB debit authorizations, the rule will be effective on a going-forward basis. Originators will have to perform account validations as there are updates to account numbers in existing authorizations.

NACHA’s rule is effective on March 19, 2021. We are accepting this rule, which can be expected to reduce unauthorized debits originated by agencies and resulting fraud losses to the government. However, the implementation of account validation will be costly for the government due to the need for systems changes, program changes at originating Federal agencies, and transactional fees for validation services incurred for the origination of WEB debits. Acceptance of the rule will result in significant additional costs to the government in the origination of WEB debits but could also have the unintended consequence of providing an incentive for agencies to encourage or restrict the public to use payment methods other than ACH that represent lower cost to the government or offer greater transaction certainty at a comparable cost. Given the anticipated costs of implementation, we are delaying the effective date of our acceptance of this NACHA rule change to March 19, 2022. We will work toward



implementing this rule in the next two years and expect several of our systems to comply prior to the 2022 date.

### **3. Supplementing Data Security Requirements**

The existing ACH Security Framework requires Financial Institutions, Originators, Third-Party Service Providers, and Third-Party Senders to establish, implement and update security policies, procedures and systems related to the initiation, processing and storage of ACH entries. These policies, procedures, and systems must protect the confidentiality and integrity of protected information; protect against anticipated threats or hazards to the security or integrity of Protected Information; and protect against unauthorized use of Protected Information that could result in substantial harm to a natural person.

The Supplementing Data Security Requirements rule expands the existing ACH Security Framework to explicitly require large, non-financial institution Originators, Third-Party Service Providers, and Third-Party Senders to protect account numbers used in the initiation of ACH entries by rendering them unreadable when stored electronically. The rule aligns with existing language contained in Payment Card Industry (PCI) requirements, thus industry participants are expected to be reasonably familiar with the manner and intent of the requirement.

The rule applies only to account numbers collected for or used in ACH transactions and does not apply to the storage of paper authorizations. The rule also does not apply to depository financial institutions when acting as internal Originators, as they are covered by existing Federal Financial Institutions Examination Council (FFIEC) and similar data security requirements and regulations.

The amendment has a phased implementation period, with the following effective dates:



- Phase 1: NACHA Operating Rules language is effective on June 30, 2020. Any Originator, Third-Party Service Provider, or Third-Party Sender that originates six million or more ACH transactions in calendar year 2019 will need to be compliant by June 30, 2020.
- Phase 2: NACHA Operating Rules language will become effective on June 30, 2021. Any Originator, Third-Party Service Provider, or Third-Party Sender that originates two million or more ACH transactions in calendar year 2020 will need to be compliant by June 30, 2021.

Going forward after calendar year 2020, any Originator, Third-Party Service Provider, or Third-Party Sender that originates two million or more ACH transactions in any calendar year will need to be compliant with the rule by June 30 of the following calendar year.

Fiscal Service supports the expansion of existing security requirements to require large non-financial institution Originators to protect account numbers used to initiate ACH transactions by rendering them unreadable while stored electronically. We are accepting this amendment.

#### **4. ACH Rules Compliance Audit Requirements**

Effective January 1, 2019 Nacha consolidated all requirements for an annual rules compliance audit within one section of the NACHA Operating Rules. Prior to the rule change, the general obligation for Participating Depository Financial Institutions (and certain Third-Party Service Providers and Third-Party Senders) to conduct an audit was located within Article One, Section 1.2.2 (Audits of Rules Compliance). However, the details pertaining to that audit obligation were separately located within Appendix Eight (Rules Compliance Audit



Requirements). This amendment retained and combined the core audit obligation with the general administrative requirements for completion of such an audit into Article One of the NACHA Operating Rules.

Under current 31 CFR 210.2(d), the rule enforcement and compliance audit requirements are not applicable to Federal agencies. We are therefore not adopting this amendment.

## **5. Minor Rules Topics**

These amendments change five specific areas of the NACHA Operating Rules to address minor issues. Minor changes to the NACHA Operating Rules have little-to-no impact on ACH participants and no significant economic impact. NACHA's minor rule amendments became effective on January 1, 2019.

### **i. ACH Operator Edits**

The ACH Operator Edits amendment modifies edit criteria to permit ACH Operators to “pend” files as an alternative to rejecting files under various error conditions, primarily related to duplicate file detection. The rule incorporates language to clarify that ACH Operator edits defined within Appendix Two of the NACHA Operating Rules represent minimum standards required by the NACHA Operating Rules, and that additional edits can be adopted by each ACH Operator as part of its service agreement with its customers.

We are accepting this amendment.

### **ii. Clarification of Telephone-initiated Entry (TEL) Authorization Requirements**

This amendment clarifies that the general rules governing the form of authorization for all consumer debits apply to the authorization of TEL entries, including the obligation to include revocation language. Only Accounts Receivable (ARC), Back Office Conversion (BOC), Point-of-Purchase (POP), and Re-presented Check (RCK) entries are explicitly



exempted from the requirement to include revocation language in the authorization. The Clarification of TEL Authorization Requirements rule also incorporates a reference that TEL entries are consumer debits only, consistent with the language for other consumer debits.

We are accepting this amendment.

iii. Clarification of RDFI Obligation to Return Credit Entry Declined by Receiver

This rule change reflects pre-existing practices regarding circumstances under which an RDFI is, or is not, obligated to return a credit entry that has been declined by a Receiver. The Clarification of RDFI Obligation to Return Credit Entry Declined by Receiver rule expressly identifies specific conditions under which the RDFI is excused from its obligation to return a credit:

- There are insufficient funds available to satisfy the return, including due to any third party lien or security interest.
- The return is prohibited by legal requirements.
- The RDFI itself has a claim against the proceeds of the credit entry, including by offset, lien, or security interest.

The rule change also modifies the rule language to refer to an entry being “declined” (rather than “refused”) by the Receiver.

We are accepting this amendment.

iv. Clarification on Reinitiation of Return Entries

This amendment is an editorial change to the language of the general rule on Reinitiated Entries to clarify the intent of the Rules that reinitiation is limited to two times.

We are accepting this amendment.



v. Clarification on RDFI Liability Upon Receipt of a Written Demand for Payment

This amendment contains editorial changes regarding conditions under which an RDFI may return a Reclamation Entry or reject a Written Demand for Payment. These changes also clarify that an RDFI may reject a Written Demand for Payment only if it was not properly originated by the ODFI.

We are accepting this amendment.

*E. Differentiating Unauthorized Return Reasons*

On April 12, 2019, NACHA Voting Membership approved Ballot #1-2019: Differentiating Unauthorized Return Reasons. The rule repurposes an existing, little-used return reason code (R11) that will be used when a receiving customer claims that there was an error with an otherwise authorized payment. Currently, return reason code R10 is used as a catch-all for various types of underlying unauthorized return reasons, including some for which a valid authorization exists, such as a debit on the wrong date or for the wrong amount. In these types of cases, a return of the debit still should be made, but the Originator and its customer (the Receiver) might both benefit from a correction of the error rather than the termination of the origination authorization. The use of a distinct return reason code (R11) enables a return that conveys this new meaning of “error” rather than “no authorization.”

The rule becomes effective in two phases. On April 1, 2020, the re-purposed return code becomes effective, and financial institutions will use it for its new purpose. A year later, on April 1, 2021, the re-purposed return code will become covered by the existing Unauthorized Entry Fee.

We are accepting this amendment.

*F. Actual or Constructive Knowledge of Death*



31 CFR Part 210 Subpart B governs the reclamation of post-death Federal benefit payments from financial institutions. Under Subpart B, both agencies and RDFIs have obligations, rights and liabilities that are triggered by actual or constructive knowledge of the death or incapacity of a recipient or death of a beneficiary. *See* § 210.10(c), (d); §210.11(a). An agency that initiates a request for a reclamation must do so within 120 calendar days after the date that the agency first has actual or constructive knowledge of the death or legal incapacity of a recipient or the death of a beneficiary. However, the definition of “actual or constructive” knowledge for this purpose is not explicitly addressed in the definition at § 210.2(b), which refers only to RDFIs.

Fiscal Service is revising the definition of “actual or constructive knowledge of death” at 31 CFR § 210.2(b) to apply the definition to agencies as well as RDFIs. In addition, we are adding a sentence to the definition to address a specific situation that has arisen in recent years in which agencies sometimes stop recurring payments to a recipient and, many months or years after stopping the payments, initiate a reclamation. As revised, § 210.2(b) requires an agency that stops certifying recurring payments to a recipient because it has reason to believe that the recipient is deceased to investigate and determine whether to initiate a reclamation within 120 days following the first missed payment date. An agency may receive information or otherwise have reason to believe that a recipient is deceased before it takes action to stop payments. However, we believe that the first missed recurring payment date preceding the initiation of a reclamation is the most apparent indicator that the agency has information of a recipient’s death that is sufficiently reliable to warrant stopping payments. Accordingly, the phrase “the time [the agency] stops certifying recurring payments to a recipient” refers to the first missed payment date.



The language would not generally apply to or affect situations in which agencies stop payments due to fraud or loss of entitlement because in most of those cases agencies would not be initiating a reclamation. In addition, the language would not generally affect situations in which an agency stops payments due to a mistaken belief that the recipient was deceased, because those payments would be reinitiated upon discovery of the mistake. Moreover, in the event that an agency initiates a reclamation more than 120 days after stopping payments and can prove that it stopped payments for a reason other than actual or constructive knowledge of death, the agency can present evidence to rebut the presumption of knowledge, in which case the 120-day deadline would not be triggered by the date the agency stopped payments.

Agencies have indicated that sometimes they have difficulty obtaining definitive proof of death (i.e., a death certificate) within 120 days of receiving constructive knowledge of death, and that therefore they may wait for a protracted period of time before initiating a reclamation. However, the legal standard applicable to agencies initiating a reclamation is not receipt of a death certificate (actual knowledge), but actual or constructive knowledge. We requested comment on this revision. Both commenters supported this change, which we are adopting in the final rule.

#### **IV. Section-by-Section Analysis**

In order to incorporate in Part 210 the NACHA Operating Rule changes that we are accepting, we are replacing references to the 2016 NACHA Rules & Guidelines book with references to the 2019 NACHA Operating Rules & Guidelines book. The NACHA Operating Rule amendment that we are not incorporating is a modification to the audit compliance provisions of the NACHA Operating Rules, which are already excluded under Part 210. Other than replacing the references to the 2016 NACHA Operating Rules & Guidelines book, no



change to Part 210 is necessary to exclude this amendment.

**§ 210.2(b)**

We are amending the definition of “actual or constructive knowledge” in order to clarify that the definition applies to agencies as well as to RDFIs. We are also adding a sentence to the definition to address situations in which agencies stop recurring payments to a recipient and subsequently initiate a reclamation. Under the revised definition, an agency is presumed to have constructive knowledge of death or incapacity at the time it stops certifying recurring payments to a recipient if the agency (1) does not re-initiate payments to the recipient and (2) subsequently initiates a reclamation for one or more payments made to the recipient. The presumption created under the definition is rebuttable in cases where an agency can demonstrate that it stopped certifying recurring payments to a recipient for a reason other than death.

**§ 210.2(d)**

We are amending the definition of “applicable ACH Rules” at § 210.2(d) by replacing the reference to NACHA’s 2016 Operating Rules & Guidelines with a reference to the ACH Rules with an effective date on or before June 30, 2021, as published in “2019 NACHA Operating Rules & Guidelines.” We are deleting the reference to Appendix Ten in subparagraph (1) because Appendix Eight is being removed in its entirety from the 2019 Rules Book, and Appendices Nine and Ten are being renumbered as Appendices Eight and Nine, respectively. We are deleting existing paragraph (7), which relates to the government’s original adoption of Same Day ACH in 2017, because it was in effect only until September 15, 2017, and is now obsolete. We are adding a new paragraph (7), which exempts the government from the Fraud Detection Standards for WEB debits until March 19, 2022.

**§ 210.3(b)**



We are amending § 210.3(b) by replacing the references to the 2016 NACHA Operating Rules & Guidelines with references to a 2019 NACHA Operating Rules & Guidelines.

#### **§ 210.6**

We are amending paragraph (g) by replacing the reference to the 2016 NACHA Operating Rules & Guidelines with a reference to a 2019 NACHA Operating Rules & Guidelines.

#### **§ 210.10(b)**

We are amending § 210.10(b) to state that an agency is presumed to have constructive knowledge of death or incapacity at the time it stops certifying recurring payments to a recipient if the agency (1) does not re-initiate payments to the recipient and (2) subsequently initiates a reclamation for one or more payments made to the recipient.

### **V. Incorporation by Reference**

The 2019 NACHA Operating Rules & Guidelines are incorporated by reference into Part 210 with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. The Office of Federal Register (OFR) regulations require that agencies discuss in the preamble of a final rule ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. In addition, the preamble of the final rule must summarize the material. 1 CFR 51.5(a). In accordance with OFR's requirements, the discussion in the Supplementary Information section summarizes the 2019 NACHA Operating Rules. Financial institutions utilizing the ACH Network are bound by the NACHA Operating Rules and have access to the NACHA Operating Rules in the course of their everyday business. All approved material is available as a bound book or in online form from NACHA, 2550 Wasser



Terrace, Suite 400, Herndon, Virginia 20171, tel. 703-561-1100, info@NACHA.org.

## **VI. Procedural Analysis**

### *Regulatory Planning and Review*

The final rule does not meet the criteria for a “significant regulatory action” as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

### *Regulatory Flexibility Act Analysis*

It is hereby certified that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule imposes on the Federal government a number of changes that Nacha has already adopted and imposed on private sector entities that utilize the ACH Network. The final rule does not impose any additional burdens, costs or impacts on any private sector entities, including any small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is not required.

### *Unfunded Mandates Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the final rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, we have not prepared a



budgetary impact statement or specifically addressed any regulatory alternatives.

### **List of Subjects in 31 CFR Part 210**

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud,  
Incorporation by reference

### **Words of Issuance**

For the reasons set out in the preamble, amend 31 CFR part 210 to read as follows:

## **PART 210 - FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE**

1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335,  
and 3720.

2. In § 210.2, revise paragraphs (b) and (d) to read as follows:

### **§ 210.2 Definitions.**

\* \* \* \* \*

(b) *Actual or constructive knowledge*, when used in reference to an RDFI's or agency's knowledge of the death or incapacity of a recipient or death of a beneficiary, means that the RDFI or agency received information, by whatever means, of the death or incapacity and has had a reasonable opportunity to act on such information or that the RDFI or agency would have learned of the death or incapacity if it had followed commercially reasonable business practices. For purposes of subpart B of this part, an agency is presumed to have constructive knowledge of death or incapacity at the time it stops certifying recurring payments to a recipient if the agency:

- (1) Does not re-initiate payments to the recipient; and
- (2) Subsequently initiates a reclamation for one or more payments made to the recipient.



\* \* \* \* \*

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before June 30, 2021, as published in the 2019 NACHA Operating Rules and Guidelines (incorporated by reference, see § 210.3(b)), except:

(1) Subsections 1.2.2, 1.2.3, 1.2.4, 1.2.5 and 1.2.6; Appendix Seven; Appendix Eight; and Appendix Nine (governing the enforcement of the ACH Rules and claims for compensation);

(2) Section 2.10 and section 3.6 (governing the reclamation of benefit payments);

(3) The requirement in Appendix Three that the Effective Entry Date of a credit entry be no more than two Banking Days following the date of processing by the Originating ACH Operator (see definition of “Effective Entry Date” in Appendix Three);

(4) Section 2.2 (setting forth ODFI obligations to enter into agreements with, and perform risk management relating to, Originators and Third-Party Senders) and section 1.6 (Security Requirements);

(5) Section 2.17.2.2-2.17.2.6 (requiring reduction of high rates of entries returned as unauthorized);

(6) The requirements of Section 2.5.8 (International ACH Transactions) shall not apply to entries representing the payment of a Federal tax obligation by a taxpayer; and

(7) Until March 19, 2022, the requirement of section 2.5.17.4(a) that the Originator utilize a fraudulent transaction detection system that validates an account to be debited for the first use of such account number and for any subsequent change(s) to the account number.

\* \* \* \* \*



3. In § 210.3, revise paragraph (b) to read as follows:

**§ 210.3 Governing law.**

\* \* \* \* \*

(b) *Incorporation by reference.* Certain material is incorporated by reference in this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section the Service must publish a document in the *Federal Register* and the material must be available to the public. All approved material is available for inspection at the Bureau of the Fiscal Service, 401 14<sup>th</sup> Street SW, Room 400A, Washington, D.C. 20227, ph. 202 874-6680, and it is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

(1) NACHA, 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171, tel. 703-561-1100, [info@nacha.org](mailto:info@nacha.org).

(i) 2019 NACHA Operating Rules & Guidelines: The Guide to the Rules Governing the ACH Network, copyright 2019 (2019 NACHA Operating Rules and Guidelines).

(ii) [Reserved]

(2) [Reserved]

\* \* \* \* \*

4. In § 210.6, revise paragraph (g) to read as follows:

**§ 210.6 Agencies.**



\* \* \* \* \*

(g) *Point-of-purchase debit entries.* An agency may originate a Point-of-Purchase (POP) entry using a check drawn on a consumer or business account and presented at a point-of-purchase. The requirements of the 2019 NACHA Operating Rules and Guidelines, incorporated by reference, see § 210.3(b), shall be met for such an entry if the Receiver presents the check at a location where the agency has posted the notice required by the ACH Rules and has provided the Receiver with a copy of the notice.

\* \* \* \* \*

5. In § 210.10, revise paragraph (b) to read as follows:

**§ 210.10 RDFI liability.**

\* \* \* \* \*

(b) *Actual or Constructive Knowledge of Death.* Actual or constructive knowledge, when used in reference to an RDFI's or agency's knowledge of the death or incapacity of a recipient or death of a beneficiary, means that the RDFI or agency received information, by whatever means, of the death or incapacity and has had a reasonable opportunity to act on such information or that the RDFI or agency would have learned of the death or incapacity if it had followed commercially reasonable business practices. For purposes of this subpart, an agency is presumed to have constructive knowledge of death or incapacity at the time it stops certifying recurring payments to a recipient if the agency:

- (1) Does not re-initiate payments to the recipient; and
- (2) Subsequently initiates a reclamation for one or more payments made to the recipient.



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**David A. Lebryk**

Fiscal Assistant Secretary

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